



Capital One Financial Corporation  
1680 Capital One Drive  
McLean, VA 22102

April 8, 2008

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Attn: Docket No. R-1305

**Re: Proposed Amendments to Regulation Z Regarding Mortgages**

Dear Ms. Johnson:

Capital One Financial Corporation (“Capital One”) is pleased to submit comments on the Board’s proposal to amend Regulation Z, implementing the Truth In Lending Act (“TILA”) and the Home Ownership and Equity Protection Act (“HOEPA”), for the purpose of creating additional protections for mortgage borrowers, particularly subprime borrowers.<sup>1</sup>

Capital One Financial Corporation is a financial holding company whose principal subsidiaries, Capital One, N.A., Capital One Bank (USA), N.A., and Capital One Auto Finance, Inc., offer a broad spectrum of financial products and services to consumers, small businesses, and commercial clients. As of December 31, 2007, Capital One’s subsidiaries collectively had \$83 billion in deposits and \$151.4 billion in managed loans outstanding, and operated more than 740 retail bank branches located in New York, New Jersey, Connecticut, Virginia, Louisiana, and Texas. Capital One’s subsidiary Capital One Home Loans, Inc., originates mortgages which it sells into the secondary market, and Capital One’s subsidiary GreenPoint Mortgage Funding, Inc., services a substantial portfolio of mortgages. Capital One is a Fortune 500 company and is included in the S&P 100 Index.

Capital One commends the Board for grappling with the many difficult issues associated with the intersection of mortgages and consumer protection rules in today’s mortgage marketplace, and strongly supports the Board’s adoption of regulatory

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<sup>1</sup> 73 Fed. Reg. 1672 (Jan. 9, 2008).

amendments of the type and general content proposed. The Board's goals "to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices while preserving responsible lending and sustainable home ownership" are critically important goals, and Capital One shares them. We have only a few comments on the proposed rule amendments.

**The Board should use the same benchmark – "comparable Treasury securities" – for the proposed category of "higher priced" mortgages as is currently in use for HMDA reporting and for defining HOEPA mortgages.**

For purposes of defining the proposed new category of "higher-priced" mortgages, the Board has proposed using spreads over Treasury securities that are the same as currently used for Home Mortgage Disclosure Act reporting – an APR 3 percentage points over Treasuries for first-lien loans, and 5 percentage points for subordinate-lien loans. However, in the current proposal, the Treasury benchmark securities themselves are defined differently, and often with shorter maturities than those of the mortgages to which they would relate.<sup>2</sup> Our main concern is that this proposal adds an unnecessary level of compliance complexity, requiring the development of multiple systems for tracking mortgage loans based on spreads over Treasuries, using substantially different benchmarks for purposes of that comparison. Therefore, the proposal substantially increases the risk of compliance error. For that reason, we strongly urge that the Board use the same Treasury benchmarks as are already in use.

Capital One joins the recommendation of other commenters, notably the American Bankers Association and the Financial Services Roundtable, that the Board should choose a different benchmark than Treasury securities altogether, a benchmark more closely aligned with the mortgage market. A number of such possible benchmarks are suggested in those comment letters. In order to facilitate robust compliance with the new rules, whatever benchmarks are chosen, we urge that the Board, if it moves to a different benchmark not based on Treasury securities, adopt the same benchmark for HMDA reporting. As we urge above, standardization of the benchmarks will best facilitate error-free compliance.

**Other issues**

We have a handful of other suggestions about the proposed amendments:

- The proposed amendments would require a lender to "consider" the borrower's debt-to-income ratio when making a "higher-priced" mortgage loan.<sup>3</sup> To mitigate the risk of future challenges based on arguments over what constitutes appropriate "consideration," we recommend that the Board create a safe harbor such that

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<sup>2</sup> 73 Fed. Reg. at 1685, 1725.

<sup>3</sup> *Id.* at 1689, 1725.

loans with a debt-to-income ratio of 50% or less are held to have met this criterion.

- Prepayment penalties are an important means of lowering the interest rate for many borrowers, and to make that benefit available to a larger population, we recommend that the Board not import the HOEPA limit of a 50% debt-to-income ratio into the set of limits on prepayment penalties for “higher-priced” mortgages.<sup>4</sup> Borrowers with a high debt-to-income ratio are no less in need of the lower interest that a prepayment penalty might make possible for them. But we also believe that the maximum prepayment penalty period need not be as long as five years, and could be shortened in the proposed amendment, for example to three years.
- Some of the Board’s proposed advertising rules would apply, or might apply, to all closed-end loans, not just mortgages.<sup>5</sup> Some of those restrictions raise questions when applied outside the mortgage lending context. For example, it is unclear whether an installment lender would be able to advertise a loan as “interest-free” if it is structured so that the APR is zero if the borrower pays the loan in full within the first year, but not if the borrower does not. Further, it is unclear whether the requirement that payment amounts include mortgage insurance payments would extend to payments for credit insurance or for debt-cancellation or suspension products with respect to non-mortgage loans. We suggest that the Board not attempt to address that larger set of issues in the context of the current mortgage-focused set of rules, but rather defer them to the more comprehensive forthcoming overhaul of the closed-end provisions of Regulation Z.

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Capital One appreciates the opportunity to comment on the Board’s proposed rule revisions. If you have any questions about this matter and our comments, please call me at 703-720-2255.

Sincerely,



Christopher T. Curtis  
Associate General Counsel  
Policy Affairs

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<sup>4</sup> 73 Fed. Reg. at 1693, 1725.

<sup>5</sup> *Id.* at 1710-11, 1729-30.